HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No.13130 of 2005

Dated 26th day of September, 2007

Between:

K. Satyanarayana ..
Petitioner

And

The Executive Officer, Sri Raghunadhaswamy
Devasthanam, Gollapalli (V), Nuziveedu Mandal,
Krishna District
and another ..
Respondents

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O R D E R:

This writ petition is filed seeking a mandamus to declare the action of the 1st respondent in not refunding the amount to the petitioner against the proceedings Rc.No.L3/39989/2002, dated 3.3.2005 and 24.5.2005 respectively issued by the 2nd respondent, as arbitrary, illegal and contrary to the orders dated 26.8.2003 in W.P.No.14401 of 2002 passed by this Court, and consequently direct the 1st respondent to refund the amount as directed in the proceedings dated 3.3.2005 together with interest at the rate of 12% per annum.

The petitioner asserts that one Ch.Venkata Ramayya filed W.P.No.14401 of 2002 for issuance of a mandamus declaring the order dated 27.6.2002 of the 1st respondent which was based on 3 Man Committee Report, as arbitrary and illegal and opposed to all cannons of law and for consequential direction to the respondents therein not to grant remission to the 4th respondent therein (the petitioner herein) to an extent of Ac.51.72 cents. The facts in that writ petition are not relevant for the purpose of deciding the issue raised in this writ petition. A learned single Judge of this Court heard the said writ petition and disposed of it by an order dated 26.8.2003 with the following observation:

a) The 1st respondent shall cause a joint survey of the land to be undertaken in the presence of the Assistant Commissioner of Endowments, Vijayawada, Krishna District, Vigilance Officer, Endowments Department, Hyderabad, Mandal Revenue Officer, Nuzvid and the Executive Officer of the 3rd respondent-Temple.

b) It shall be open to the petitioner and the 4th respondent to be

present by themselves or through their representatives.

c) Whenever such survey is undertaken, the petitioner and the 4th respondent shall be issued notices intimating the dates of survey/inspection.

d) Any decision as to the refund of the amount to the 4th respondent shall be taken on the outcome of the survey.

e) This Exercise shall be completed within three months from the date of receipt of this order.

This order has become final as it is not questioned by any of the respondents therein.

It appears that the petitioner in the said writ petition and the 4th respondent i.e. petitioner herein were given sufficient opportunity of being heard, and accordingly, a joint survey, as directed by this Court, was conducted and ultimately it was found that an extent of Ac.66.28 cents of land is available in R.S.No.35 of Vempadu Agraharam, but not an extent of Ac.118 .00 cents. Pursuant thereto, the Joint Commissioner (Estates) issued proceedings in Rc.No.L3/39989/2002, dated 3.3.2005 ordering refund of an amount of Rs.5,26,576/- as the same is in excess and was paid by the petitioner. It may be apt to refer to the said proceedings wherein it is mentioned as under:

> "In the circumstances reported by the Regional Joint Commissioner, M.Z-1, Endowments Department, Kakinada, in the reference 1st cited and as per the legal opinion of the G.P., for Endowments, High Court of A.P., Hyderabad in the reference 2nd cited, Commissioner, Endowments Department, A.P, Hyderabad hereby accords permission to the Executive Officer of Sri Ragu Nadha Swamy Temple, Goppalalli, Nuziveedu to refund proportionate lease amount of Rs.5,26,576/- (Rupees Five Lakhs Twenty Six Thousand Five Hundred and Seventy Six Only) to an extent of Ac.66.28 cents to the lessee Sri K.Satyanarayana.
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> Therefore, the Deputy Commissioner, Endowments Department, Kakinada, Assistant Commissioner, Endowments Department, Vijayawada are directed to make necessary arrangements as per the orders of the Commissioner in the subject matter."

Now, the grievance of the petitioner herein is that in spite of the proceedings, dated 3.3.2005 ordering refund of the amount, the respondents have not refunded it. Aggrieved by the action of the respondents, the petitioner has filed this writ petition.

Heard Sri P.V.S.S.S.Rama Rao, learned counsel for the petitioner, Sri P.Roy Reddy, learned counsel for the 1st respondent, the learned Government Pleader for Endowments, appearing for the 2nd respondent and perused the material placed on record.

I am unable to countenance the arguments advanced by the learned counsel for the 1st respondent. According to him, it is a payment of money, as such, the petitioner has to approach the civil Court to get back his amounts but not this Court by filing a writ petition under Article 226 of the Constitution of India.

In fact, in the earlier round of litigation, this Court specifically observed that any decision as to the refund of the amount to the 4th respondent therein i.e. the petitioner herein shall be taken on the outcome of the survey. The outcome of the survey that was held in the presence of the petitioner herein and the petitioner in W.P.No.14401 of 2002 is that the total extent of lands available for lease in R.S.No.35 of Vempadu Agraharam is only Ac.66.28 cents but not Ac.118.00 cents. Pursuant thereto, the proceedings dated 3.3.2005 were issued, and hence, it cannot be said that this is a matter relating to payment of money and the petitioner's remedy is to approach the civil Court. What all the petitioner seeks in this writ petition is for implementation of the proceedings dated 3.3.2005. Hence, this Court is of the view that the petitioner is entitled to the relief sought for.

In the result, the writ petition is allowed and the respondents are hereby directed to give effect to the proceedings dated 3.3.2005 and 24.5.2005 respectively together with interest at the rate of 6% per annum from the date i.e. 3.3.2005 when the order was passed. The

amount shall be paid to the petitioner within a period of four months from the date of receipt of a copy of this order. No costs.

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26.09.2007

Note: Furnish copy in a week.

B/o

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